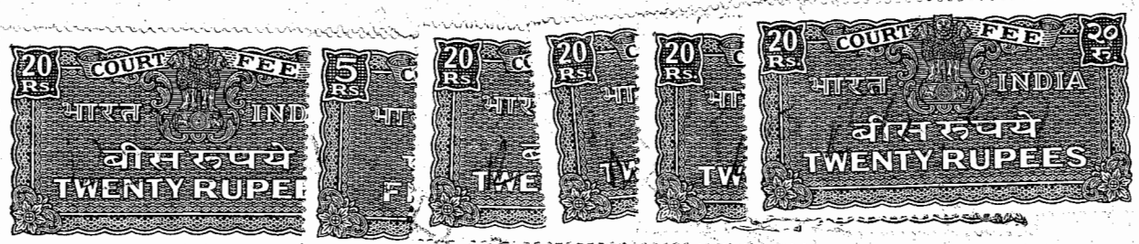
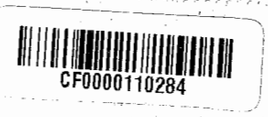
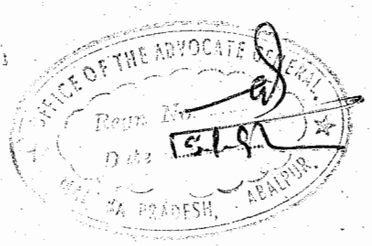




IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

002

Miscellaneous Petition No. 223 of 1992



Petitioners:

1. Umesh Sharma, aged 32 years, son of Shri Narottamram Sharma, resident of Kawardha, Distt. Rajnandgaon.
2. Mohammed Jiquor, aged 30 years, son of W.M. Ibrahim, resident of Kawardha, District Rajnandgaon.
3. Dhirendra Dube, aged 28 years, son of late Shri Shivkumar Dubé, resident of Sahaspura Sohara, (Lohara) Tahsil Kawardha, District Rajnandgaon.
4. Asharaf Ali, aged 22 years, son of Shri Rahamat Ali Gandai, resident of Khairagarh, District Rajnandgaon.
5. Yashkaran Lal Kesharwani, aged 34 years, son of Shri Kishorilal Bodla, resident of Kawardha, District Rajnandgaon.
6. Omprakash Sharma, aged 20 years, son of Shri Ishwar Prasad Sharma, resident of Bodla, Kawardha, District Rajnandgaon.

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15-1-92
K K Pandey

15-1-92

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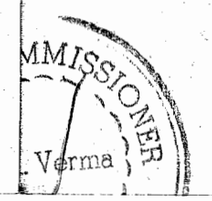
Versus

Respondents:

1. State of Madhya Pradesh through, Secretary, Excise Department, Vallabh Bhawan, Bhopal.
2. District Magistrate, cum, Collector, Rajnandgaon (M.P.)
3. Superintendent of Police, Rajnandgaon (M.P.)
4. District Excise Officer, Rajnandgaon (M.P.)
5. Sub-Inspector Excise, Rajnandgaon Circle, Rajnandgaon (M.P.)



PETITION UNDER ARTICLES 226 & 227 CONSTITUTION OF INDIA

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XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक WP 223/92 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	31/3/2005 Smt. Renu Kochar, Advocate, for the petitioners. Shri P.S. Koshy, Dy.A.G., for the respondents. Return has been filed by the respondents. Heard. This petition was filed by the petitioner on 15/1/1992 on the ground that by an oral order of the respondents the petitioners were prohibited from exhibiting the films through V.C.R. by means of disc antenna. The matter came up for hearing before the High Court of M.P. on 20/1/1992 and the High Court passed the interim order to the following effect: *"In the meanwhile, we direct that operation of the impugned oral order of the respondents shall remain stayed until further orders. As a consequence, the petitioners shall exhibit films through V.C.R. by means of disc antenna until further orders."* Thereafter, the Madhya Pradesh Entertainments Duty and Advertisements Tax Act, 1936 (hereinafter referred to as the Act of 1936) was amended and from 1/5/1999, Section 2(aaa) and Sections 3-A & 3-B have been incorporated. Learned counsel for the respondents contended that as the Act of 1936 has been amended, the services of cable operators have been brought within	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक.....सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

the ambit of the Act and they are now regulated by the Act. It is submitted that certain conditions have to be complied with before carrying on the cable operation work. It is also submitted that the petitioners are carrying on the cable operation work without complying with the requirements.

Learned counsel for the petitioners on the other hand contended that the amendment would not have any effect on the petitioners and that is why they were continuing the business. It is submitted that the petitioners are not covered, as they are not carrying on the business in public place.

Section 2(aaa) and Sections 3-A & 3-B of the Madhya Pradesh Entertainments Duty and Advertisements Tax Act, 1936 incorporated by the amendment are pertinent and are quoted below:

> *"**2. Definitions**- (a) xxxx xxxx xxxx*
> *(aa) xxxx xxxx xxxx*
> *(aaa) 'Advertisement tax' means a tax levied and payable under Section 3-A.*
>
> ***3-A Entertainment Duty payable by proprietor of V.C.R. or V.C.P.**-(1) Notwithstanding anything contained in Section 3, every proprietor of,-*
> *(a) an entertainment by V.C.R. or V.C.P. held in a place or town, where there is a Cinema, and such town or place having population mentioned in column (2) of the table below, on such screen size as mentioned in the table, shall pay to the State Government Entertainments duty per month at the rate specified in the corresponding entry in column (3) or column (4) thereof, as the case may be,–*

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक.....सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

(b) *an entertainment by V.C.R. or V.C.P. held in a place or town, where there is no cinema and such town or place having population mentioned in column (2) of the table below, on such screen size as mentioned in the table, shall pay to the State Govt. entertainments duty per month at the rate specified in the corresponding entry in column (3) or column (4) thereof, as the case may be-,*

Provided that the State Govt. may, by notification, increase the amount of consolidated duty specified in the tables under clauses (a) and (b) at an interval of not less than two years and where the rate is increased the same shall not be more than twenty five per cent of the rate as mentioned in the above table:

Provided further that every notification under the above proviso shall as soon as may be after it is issued be laid on the table of the Legislative Assembly and the provisions of Section 24-A of the Madhya Pradesh General Clauses Act, 1957 (No.3 of 1958) shall apply thereto as they apply to a rule.

(2) No duty shall be payable under sub-section (1) from the month next following the month in which such proprietor closes exhibition by V.C.R. or V.C.P. for commercial purposes and gives notice in writing to that effect to such officer in such form and fulfils such terms and conditions as may be prescribed.

(3) The duty payable under sub-section (1) shall be paid to or collected or realized by such officer or authority and in such manner as may be prescribed.

3-B- Entertainment duty payable by Cable Operator.- *(1) Notwithstanding anything contained*

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

in Section 3 or Section 3-A, every Cable Operator providing access to entertainments through cable service to subscribers of such service, not being owner or occupants of rooms of hotel or lodging house, in a place or town having population mentioned in column (2) of the table below, shall pay to the State Govt. a consolidated amount of duty per month at the rate specified below:-

(2) Every proprietor of hotel of lodging house providing access to entertainments in the rooms of a hotel or lodging house through the cable service of his own or obtained through any Cable Operator, shall pay to the State Govt. based on the number of rooms in the hotel or lodging house in which cable service is provided and the average of room rents being charged for the occupation of the rooms as mentioned in column (2) and (3) respectively of the table below, a consolidated amount of the duty per month at the rate specified in column (4) thereof, as the case may be:-

Provided that the State Govt. may, by notification, increase, the amount of consolidated duty, as shown with tables aforesaid at an interval of not less two years and where the rate is increased the same shall not be in excess of twenty five per cent of the rate shown in the table above:

Provided further that every notification under the above proviso shall as soon as may be after it is made be laid down on the table of the Legislative Assembly and the provisions of Section 24-A of the Madhya Pradesh General Clauses Act, 1957 (No.3 of 1958) shall apply thereto as they apply to a rule.

(3) The duty payable under sub-section (1) of sub-section (2) shall be paid to or collected or realized

(30)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक.....सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

by such officer or authority and in such manner as may be prescribed.

(4) The Cable Operator and Proprietor of hotel or lodging house shall not be liable to pay consolidated entertainments duty specified in sub-section (1) and sub-section (2) from the month following the month in which he discontinues to provide cable service to subscribers from his cable television network, provided he immediately informs such officer regarding it in such manner as may be prescribed."

Having considered the facts and circumstances of the case and material on record and in view of the aforesaid amendments, which have been made in the Act on 1/5/1999, in the opinion of this Court, the matter has to be examined by respondents no.2 and 4. Let that be examined. The petitioners may be heard and orders be passed as expeditiously as possible preferably within a period of one month from the date of receipt of this order.

Subject to what has been stated above, this petition stands disposed of with liberty to avail the remedy available under the law in case such an occasion arises including the filing of the petition.

Sd/-
Fakhruddin
Judge

GRPRJ—FS/350—12/2000—50,000.